



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,765	04/14/2004	James Russell Miller	25163.2.16	6735
40320	7590	02/08/2006	EXAMINER	
BURNS & LEVINSON LLP			DOSTER GREENE, DINNATIA JO	
1030 15TH STREET NW, SUITE 300			ART UNIT	
WASHINGTON, DC 20005-1501			PAPER NUMBER	

3743

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/824,765

Applicant(s)

MILLER, JAMES RUSSELL

Examiner

Dinnatia Doster-Greene

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detail Action</u> . |

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: In claim 1, line 13, the phrase "the first back element" lacks proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rector (U.S. Patent No. 4,384,372) in view of Henry (U.S. Patent No. 4,175,548). Rector discloses an iliac crest belt assembly (10) adapted for interlocking attachment to a body brace having a back element shaped to fit about a person's lower back region (col. 1, lines 65-68; col. 2, lines 24-33) (Fig. 4). The iliac crest belt assembly comprises an elongated strip and fastening means. The elongated strip (40) is formed from a substantially rigid material, has a center portion and first and second ends and comprises an inner layer of relatively compressible material attached to the substantially rigid material. The elongated strip is configured to, when the belt assembly is locked about the waist of the person: (1) engage the iliac crests of the person with adjustable

Art Unit: 3743

tension and (2) encircle the waist of the person with an adjustable circumference and tension, with the center portion positioned substantially against the lumbar spinal region of the person and the first and second ends positioned against the front of the person, so that stabilizing force is imparted from the elongated strip through the fastening means to the back element.

Although Rector discloses fastening means (42) (Fig. 2) (col. 2, lines 45-54), the fastening means are not attached to the center portion of the elongated strip. However, Henry, which also relates to a device which retains a back brace (Abstract), discloses that it is known to design a belt (Henry, 18) including fastening means (Henry, 22). Furthermore, Henry discloses adjustment and locking elements (44) that adjust the fit of and locking the belt assembly about the waist of the person. The adjustment and locking elements is disposed in substantially corresponding locations on the first and second ends, respectively, of the elongated strip. Thus, it would have been obvious to modify the back brace of Rector to substitute the slots (Rector, 42) of Rector with the snaps (Henry, 22) and adjustment and locking elements (Henry, 44) of Henry for the purpose of providing a back brace which can be easily removed and attached.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dinnatia Doster-Greene whose telephone number is 571-272-7143. The examiner can normally be reached on 8:30-4:30.

Art Unit: 3743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ddg

Henry Bennett
Supervisor Patent Examiner
571-272-4791

